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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 257

JOE R. STEELE,
Petitioner

versus

UNITED STATES OF AMERICA
Respondent

MOTION FOR REHEARING ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JOE R. STEELE, *Petitioner*

By: BEN F. FOSTER
and
RALPH G. LANGLEY
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Office and Post Office Address
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San Antonio, Texas

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Petitioner respectfully moves for a rehearing of the order of this Court dated October 14, 1957, denying certiorari and says:

I.

Denial of certiorari is in direct conflict with *Grunewald v. United States*, 353 U. S. 391, and *Raffel v. United States*, 271 U. S. 494 wherein this

Court held that a predicate must be laid as a condition precedent to the admission of evidence of defendant's failure to take the stand at a former trial. *The record here is absolutely devoid of any predicate whatsoever.*

II.

Denial of certiorari is in direct conflict with *Grunewald v. United States*, 353 U. S. 391, wherein this Court held that a judicial determination *by the trial judge* of the sufficiency of the predicate is a mandatory prerequisite to the admissibility of evidence as to a defendant's failure to testify in his own behalf at a former trial. *No such determination was even considered here.*

III.

In *Grunewald v. United States*, 353 U. S. 391, four members of this Court concluded that evidence identical to the evidence admitted in the case at Bar is inadmissible per se and violative of fundamental Constitutional rights under the Fifth Amendment.

IV.

Certiorari could be granted and a reversal and a remand of this cause ordered on memorandum opinion without oral argument by the mere citation of *Grunewald v. United States*, 353 U. S. 391; *Slochower v. United States*, 350 U. S. 551; and *Watkins v. United States*, 252 U. S. 822. All pertinent facts and law are before the Court.

WHEREFORE, Petitioner prays as in his application for Writ of Certiorari.

JOE R. STEELE, *Petitioner*

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and
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San Antonio, Texas

I hereby certify that this Petition for Rehearing is presented in good faith and not for delay and that it is restricted to the grounds specified in Rule 58 of the Revised Rules of the Supreme Court of the United States. I further hereby certify that I have delivered a copy of the above Petitioner's Motion for Rehearing to counsel named above by depositing in the United States Mail, with first class postage prepaid, to the Post Office address indicated in each instance.

BEN F. FOSTER